

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2016

Public Authority: London Borough of Lewisham
Address: Second Floor
Lewisham Town Hall
Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant requested from the London Borough of Lewisham ("the Council") information concerning its No Recourse to Public Funds training material, guidance and other related documents. The Council wrote to the complainant and informed her that it was considering the application of section 36 to the requested information.
2. The Commissioner's decision is that the Council has breached section 1 as it has not issued a response to the request which is in compliance with FOIA and has breached section 10(1) by not doing so within 20 working days of receipt of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a response to the complainant's request of 12 January 2016 which is in compliance with the provisions of the Freedom of Information Act.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 12 January 2016 the complainant wrote to the Council and requested the following information:

"1. NRPF team internal guidance on territorial responsibility under s.17 for NRPF families

2. Blank triage form to be completed by NRPF assessmors

3. NRPF team internal guidance note on concurrent duties and s.17 of the CA 1989

4. NRPF internal guidance on where domestic violence is raised as an issue assessment.

5. NRPF internal guidance on assessment of EU Nationals and Zambrano Carers

6. NRPF: Guidance for assessment and case management, v.1, July 2015 (if any new versions of this guidance have been produced, I request that also).

7. Training materials for NRPF team concerning 'Housing Options'

8. Blank initial assessment form.

9. NRPF Decision Making Guide v.3, 2014

...Finally, I understand that there are team meetings and dedicated review days during which the NRPF team discuss guidance documents. Please can I have a copy of any minutes produced at these meetings, and any material used in the dedicated review meetings."

6. The Council wrote to the complainant on 18 February 2016 and informed her that:

"...we are considering the applicability of qualified exemptions with respect to your request; as such, the 20 working-day time period no longer applies (section 10(3) of the FOI Act).

In particular, we are considering the applicability of Section 36 (2) (a) and (c) to your request."

7. The complainant wrote back to the Council on 18 February 2016. She pointed out that section 10(3) only allowed for an extension of time to consider the public interest test, not whether section 36 was applicable.

She also pointed out that section 17(1) required the Council to inform a requester within 20 working days that it considered section 36 to be engaged and to explain why this was the case.

8. On 24 February 2016 the Council informed the complainant that it was working on a response to her request and would endeavour to get a formal response to her as soon as possible. The complainant responded on the same day indicating that she wished to complaint about the Council's handling of her request.
9. On 29 February 2016 the complainant wrote again to the Council asking for confirmation that her complaint had been forwarded to the relevant person for consideration.
10. On 8 March 2016 the complainant wrote to the Council again setting out the basis for her complaint about its handling of her request.

Scope of the case

11. The complainant contacted the Commissioner on 15 April 2016 to complain about the way her request for information had been handled, including the Council's failure to provide her with a response to her request.
12. The Commissioner considered whether the Council had breached FOIA in its handling of the request.

Reasons for decision

Section 1 and 10 – Time for compliance with a request

13. Section 1(1) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have that information communicated to him, subject to the application of any relevant exemption. Section 10(1) of FOIA provides that this must be done "*...not later than the twentieth working day following the date of receipt.*"
14. On 2 June 2016, the Commissioner telephoned the Council to obtain an explanation as to current position in relation to its response to the request. The Council wrote to the Commissioner on the same day and explained that it was reviewing each relevant document to determine whether it should be withheld rather than seeking to exempt all of the information in its entirety. It confirmed that a meeting had been

arranged with its qualified person for 9 June 2016 to review the documents.

15. On 2 June 2016 the Commissioner wrote to the Council and noted that it had indicated in correspondence with the complainant that it was "*considering the applicability*" of section 36 to her request. He went to state that he understood that to date she had not been provided a formal response to her request, either confirming the basis on which it believed that the requested information was exempt from disclosure or providing the information to her. He asked the Council to ensure that it provided the complainant with a response within the next 10 working days. He stated that if it did not provide a response within the next 10 working days, he would issue a decision notice requiring it to do so. The complainant informed the Commissioner on 20 June 2016 that she had not received a formal response to her request.
16. In light of the above, the Commissioner has determined that the Council has not complied with section 1 of FOIA. He therefore requires it issue a response to the complainant's request of 12 January 2016 which is in compliance with the provisions of the Freedom of Information Act.
17. The Commissioner has also determined that by not complying with section 1 within 20 working days of receipt of the request, the Council breached section 10(1) of FOIA.
18. In addition, the Commissioner notes that the Council in its correspondence with the complainant sought to rely on section 10(3) as a basis for extending the time for responding to her. However, the Act does not permit a public authority to use this provision as a basis for extending the time for its response where it has not informed the requester of the qualified exemption or exemptions that it is seeking to rely on.

Other matters

19. The Commissioner is very concerned to note that the complainant made her request on 12 January 2016 and to date, over 5 months later, the Council has not provided her with a response in accordance with the Act. He is also concerned to note that when the Council wrote to the complainant on 18 February 2016, it informed her that it was "*considering the applicability*" of section 36 and yet to date he is not aware that it has even obtained the qualified person's opinion, which is clearly necessary to engage this exemption.
20. Finally, the Commissioner notes that the complainant made complaints on at least two occasions to the Council about its handling of her request

and asked that these be passed on to a senior member of staff for consideration. Again, to date, the Commissioner is not aware that she has received a response from the Council.

21. The Commissioner does not regard the Council's handling of this request as acceptable and understands why it has given rise to considerable frustration on the part of the complainant. He expects the Council to rectify its failings as a matter of urgency and would not expect to see a recurrence of similar problems in future.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
Group Manager
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Wilmslow
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SK9 5AF